

DEPARTMENT OF CONSERVATION  
STATE MINING AND GEOLOGY BOARD  
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## RECLAMATION STANDARDS

### TITLE 14, NATURAL RESOURCES DIVISION 2, DEPARTMENT OF CONSERVATION CHAPTER 8, MINING AND GEOLOGY SUBCHAPTER 1, STATE MINING AND GEOLOGY BOARD ARTICLE 9, RECLAMATION STANDARDS SECTION 3704, PERFORMANCE STANDARDS

## NOTICE OF PROPOSED RULEMAKING

**NOTICE IS HEREBY GIVEN** that the State Mining and Geology Board (SMGB) proposes to amend the regulations described below after considering all comments and recommendations regarding the proposed action.

### PROPOSED REGULATORY ACTION

The SMGB proposes to amend § 3704 of the California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1, Article 9. These regulations will clarify and make specific proposed changes to update references to the Uniform Building Code.

### PUBLIC HEARING AND WRITTEN COMMENT PERIOD

The SMGB has not scheduled a public hearing on this proposed action; however, the SMGB will hold a hearing on June 22, 2000 if it receives a written request for a public

hearing from any interested person, or his/her authorized representative, no later than 15 days before the close of the written comment period. The hearing facility will be barrier free in accordance with the Americans with Disabilities Act. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed

*The Mission of the State Mining and Geology Board is to Represent the State's Interest in the Development, Utilization and Conservation of Mineral Resources; Reclamation of Mined Lands; Development of Geologic and Seismic Hazard Information; and to Provide a Forum for Public Redress*

action described in the Informative Digest. The SMGB requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony.

Any interested person may submit written comments relevant to the proposed regulatory action to the SMGB. The Written Comment Period closes at 5:00 P.M. June 19, 2000. The SMGB will consider only relevant comments received at the SMGB office by that time.

## **AUTHORITY AND REFERENCE**

The SMGB is proposing to adopt these regulations that amend § 3704 to Title 14, Division 2, Chapter 8, Article 9 of the California Code of Regulations pursuant to the authority granted in the Surface Mining and Reclamation Act of 1975 (PRC § 2710 et seq.), specifically under PRC § 2755 and § 2756. These regulations clarify and make specific the standards to be addressed pursuant to PRC § 2773.

## **INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW**

Article 9 of Title 14, commencing with § 3700 of the California Code of Regulations addresses minimum standards to be applied when reclaiming mine sites following completion of mining.

Section 3704 of the California Code of Regulations (CCR) became effective January 15, 1993. References in subsection (a) to the 1991 Edition of the Uniform Building Code (UBC) need to be revised so as to keep the reclamation standards current, as well as to avoid confusion about which engineering standards will be followed if a lead agency adopts a later version of the UBC.

Subsection (g) is revised to reflect current conditions and remove ambiguity. The “lead agency” for the Surface Mining and Reclamation Act of 1975 no longer is the only agency with authority in wetlands areas, since other state and federal agencies also mitigate wetland habitats.

## **ALTERNATIVES STATEMENT**

The State Mining and Geology Board must determine that no alternative considered by the SMGB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

The SMGB staff has made the following preliminary determinations:

- Mandate on local agencies and school districts: The SMGB staff has determined that adoption of these proposed regulations does not impose any new mandates on local agencies or on local school districts.

- Cost or savings to any State agency: No savings or additional expenses to state agencies are identified.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: The SMGB staff has determined that the adoption of these proposed regulations does not impose any additional cost obligations on local agencies or on local school districts.
- Other non-discretionary cost or savings imposed upon local agencies: No other non-discretionary costs or savings to local agencies have been identified.
- Cost or savings in Federal funding to the State: No costs or savings in Federal funding to the State have been identified.
- Significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states: The SMGB staff has determined that no adverse impacts to California businesses result from the adoption of this proposed regulatory language.
- Potential cost impact on private persons or directly affected businesses: SMGB staff has determined that there is no impact on private persons or businesses. These proposed regulations do not mandate actions upon private persons or businesses.
- Creation or elimination of jobs in California: The SMGB staff has determined that the adoption of these regulations will not:
  - Create nor eliminate jobs within California;
  - Create new nor eliminate existing businesses within California;
  - Expand businesses currently doing business in California.
- Significant effect on housing costs: The SMGB staff has determined that the adoption of these regulations will have no significant effect on housing costs.
- Effects on small businesses: The SMGB staff has determined that the adoption of these proposed regulations may affect small businesses. Small businesses will be required to meet already existing, locally adopted Uniform Building Codes and grading codes. These regulations clarify that the minimum engineering standards to be applied are those codes. The express terms of the proposed action written in plain English are available from the agency contact person named in this notice

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS**

An interested person may request a copy of the proposed regulations and the Initial Statement of Reasons, or direct questions about the proposed regulations and

Initial Statement of Reasons and inspect all supplemental information, upon which the regulations are based, contained in the rulemaking file. The rulemaking file is available for inspection at the SMGB Office at 801 K Street, Room 2436, Sacramento, California, between 9:00 A.M. and 4:00 P.M., Monday through Friday. Copies of the proposed regulations and the Initial Statement of Reasons may be requested by writing to the above address, or viewed on the SMGB's Internet Web Site at:

**<http://www.consrv.ca.gov/smgb>**

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Following the public comment period, the SMGB may adopt, as final, the proposed regulations substantially as described in this Notice and Informative Digest. Copies of these regulations, as finally adopted, will be sent to all persons on the SMGB's public comment mailing list for this issue and others requesting copies. If, as a result of public comment, substantive changes to these regulations are deemed appropriate, copies of the proposed changes will be sent to all persons who testified at the public hearing or submitted written comments during the comment period or at the public hearing, and to those who have requested copies of information regarding the regulation.

Thereafter, the SMGB will accept written comments for a period of at least 15 days after the date upon which changes were made available. If adopted, the regulations will appear in CCR, Title 14, Division 2, Chapter 8, Subchapter 1, Article 9, § 3704.

## **CONTACT PERSON**

Statements, arguments or contentions must be submitted in writing in order for them to be considered by the SMGB. To be included in the mailing list and to receive updates on this rulemaking, please contact the SMGB at (916) 322-1082. Please direct all written comments, procedural inquiries and requests for documents to:

Ms. Kit Gonzales, Executive Assistant  
State Mining and Geology Board  
801 K Street, MS 24-05  
Sacramento, California 95814

# **INITIAL STATEMENT OF REASONS/PLAIN ENGLISH POLICY STATEMENT**

## **GENERAL PURPOSE AND CONDITION ADDRESSED**

Article 9 of Title 14, commencing with § 3700 of the California Code of Regulations addresses minimum standards to be applied when reclaiming mine sites following completion of mining.

Section 3704 of the California Code of Regulations (CCR) became effective January 15, 1993. References in subsection (a) to the 1991 Edition of the Uniform Building Code (UBC) need to be revised so as to keep the reclamation standards current, as well as to avoid confusion about which engineering standards will be followed if a lead agency adopts a later version of the UBC.

Subsection (g) is revised to reflect current conditions and remove ambiguity. The “lead agency” for the Surface Mining and Reclamation Act of 1975 no longer is the only agency with authority in wetlands areas, since other state and federal agencies also mitigate wetland habitats.

On February 10, 2000 the Joint Committee of the Board in open public session recommended that the SMGB approve the changes to the § 3704. At its regularly scheduled business meeting on March 9, 2000 the SMGB approved the proposed changes to § 3704.

## **SPECIFIC PURPOSE**

CCR § 3704(a) is amended to reflect updates to references to the Uniform Building Code and to remove the reference to the 1991 Edition of the UBC.

CCR § 3704(b) addresses backfilling for resource conservation purposes and is not changed.

CCR § 3704(c) addresses mining waste piles or dumps and is not changed.

CCR § 3704(d) addresses final reclamation fill slopes and is not changed.

CCR § 3704(e) addresses the final contouring of fill slopes and is not changed.

CCR § 3704(f) addresses the slope stability of final cut slopes and is not changed.

CCR § 3704(g) addresses the placement of piles or dumps of mining wastes on wetlands, and is amended to reflect that mitigation in wetlands must be acceptable to the appropriate regulating agency rather than specifically stating the “lead agency”. The “lead agency” for the Surface Mining and Reclamation Act of 1975 no longer is the only agency with authority in wetlands areas, since other state and federal agencies also mitigate wetland habitats.

## **STATEMENT OF NECESSITY**

The Surface Mining and Reclamation Act of 1975, § 2759, provides that the State Mining and Geology Board shall continuously review and revise the regulations as necessary. The SMGB has determined that § 3704 has become unclear over time, and requires revisions to remove ambiguities.

## **IDENTIFICATION OF TECHNICAL / THEORETICAL / EMPIRICAL STUDY, REPORTS, OR DOCUMENTS UPON WHICH THE SMGB HAS RELIED**

The SMGB has relied upon the Surface Mining and Reclamation Act (Public Resources Code § 2710 et seq.) and testimony received during public meetings of the SMGB on February 10, 2000 and March 9, 2000.

## PROPOSED TEXT

### **§ 3704 Performance Standards for Backfilling, Regrading, Slope Stability, and Recontouring.**

*Backfilling, regrading, slope stabilization, and recontouring shall conform with the following standards:*

*(a) Where backfilling is proposed for urban uses (e. g. roads, building sites, or other improvements sensitive to settlement), the fill material shall be compacted in accordance with ~~section 7010, Chapter 70 or the Uniform Building Code, published by the International Conference of Building Officials (1994)~~ and as adopted by the lead agency, the local grading ordinance, or other methods approved by the lead agency as appropriate for the approved end use.*

*(b) Where backfilling is required for resource conservation purposes (e. g. agriculture, fish and wildlife habitat, and wildland conservation), fill material shall be backfilled to the standards required for the resource conservation use involved.*

*(c) Piles or dumps of mining waste shall be stockpiled in such a manner as to facilitate phased reclamation. They shall be segregated from topsoil and topsoil substitutes or growth media salvaged for use in reclamation.*

*(d) Final reclaimed fill slopes, including permanent piles or dumps of mine waste rock and overburden, shall not exceed 2:1 (horizontal:vertical), except when site-specific geologic and engineering analysis demonstrate that the proposed final slope will have a minimum slope stability factor of safety that is suitable for the proposed end use, and when the proposed final slope can be successfully revegetated.*

*(e) At closure, all fill slopes, including permanent piles or dumps of mine waste and overburden, shall conform with the surrounding topography and/or approved end use.*

*(f) Cut slopes, including final highwalls and quarry faces, shall have a minimum slope stability factor of safety that is suitable for the proposed end use and conform with the surrounding topography and/or approved end use.*

*(g) Permanent placement of piles or dumps of mining waste and overburden shall not occur within wetlands unless mitigation acceptable to the ~~lead agency~~ appropriate regulatory agency has been proposed to offset wetland impacts and/or losses.*

*Note: Authority cited: Sections 2755, 2756, and 2773, Public Resources Code;  
Reference: Section 2773, Public Resources Code.*